

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re Darryl E. Dix	:	CIVIL ACTION
	:	
	:	NO. 97-5211
	:	
	:	Bankruptcy Case Number
	:	97-13179F

ORDER-MEMORANDUM

AND NOW, this 10th day of November, 1997, debtor Darryl E. Dix's second notice of appeal filed July 16, 1997, is dismissed.

This court has no jurisdiction over the appeal. The order of the Bankruptcy Court became final and unappealable in that no appeal was taken within 10 days after the date of entry, April 29, 1997. Fed.Bankr.R.P. 8002(a). This requirement is absolute and non-discretionary. "Failure to file a timely appeal deprives the district court of jurisdiction to review the bankruptcy court's order of judgment." Despot v. Allstate Insurance Company, 212 B.R. 94, 97 (W.D. Pa. 1997) (citing In re Universal Minerals, Inc., 755 F.2d 309, 312 (3d Cir. 1985)).

The present appeal was filed on July 16, 1997. On June 30, 1997 the first notice of appeal was dismissed with prejudice for untimeliness.¹ Appellant Darryl E. Dix is hereby notified that no further notice of appeal may be filed without written permission of this court.

¹The first appeal did not comply with Fed.Bankr.R.P. 8006, an issue that was unnecessary to reach in view of the lack of jurisdiction.

Debtor's motion to reopen the case is moot. A case that has not been "closed" within the meaning of 11 U.S.C. §350 cannot be "reopened." See In re Lewis and Coulter, Inc., 159 B.R. 188, 191 (W.D. Pa. 1993). Appellant's case was dismissed by default; it was not closed.²

Edmund V. Ludwig, J.

²Even if appellant's motion to reopen were viewed as a motion to vacate dismissal under Fed.Bankr.R.P. 9024, it would be untimely. Such a motion must be filed within 10 days of entry of judgment. Fed.Bankr.R.P. 8002(b)(4).